

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 22 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DAKSHABEN G PATEL

Versus

BHAGWANJI J KANERIA

Appearance:

MR HJ NANAVATI for Petitioners
SERVED for Respondent No. 1
Mr. ST Mehta, Addl. PP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/02/97

ORAL JUDGEMENT

This petition arises of an application for enhancement of maintenance made by the deserted wife and minor son.

2. Petitioners had preferred Criminal Miscellaneous Application No. 1 of 1988 for maintenance under section

125 of the Code of Criminal Procoedure, 1973 before the learned Judicial Magistrate, First Class, Manavadar. Said application was allowed by the learned Magistrate on 9th June, 1989. Desertion was believed by the learned Magistrate and the learned Magistrate held that the respondent No. 1 was a rich man having agricultural lands, shops, business etc. He, therefore,under his judgment and order dated 9th June, 1989, awarded monthly maintenance of Rs.300/- and Rs.200/- to the petitioners respectively. Petitioners, thereafter, preferred Criminal Miscellaneous Application NO. 138 of 1993 for enhancement of maintenance under section 127 of the Criminal Procedure Code. In the said application, the petitioners contended that in view of the rise in prices and in view of the education of petitioner No. 2, minor son, monthly maintenance payable to the petitioners be enhanced to Rs.500/- each. Learned Magistrate, considering the rising costs of living and the education of petitioner No. 2, under his judgment and order dated 17.1.1994, enhanced monthly maintenance payable to the petitioners to Rs.500/-.

3. Feeling aggrieved, respondent No. 1 preferred Criminal Revision Application No. 22 of 1994 before the learned Sessions Judge, Junagadh who, under his judgment and order dated 14th December, 1994, allowed the same. The learned Sessions Judge held that there was no evidence in respect of increase in the income of respondent No. 1 and he, therefore, reduced the enhanced maintenance awarded to the petitioners to that of Rs. 300/- and Rs.250/- respectively.

4. Feeling aggrieved, the petitioners have preferred this petition. Learned advocate Mr. Nanavaty has relied upon the observations made by and the findings recorded by the learned Magistrate in the earlier proceedings namely Criminal Miscellaneous Application No. 1 of 1988. He has submitted that these findings have become final and are binding to the parties to this litigation. He has further submitted that in view of the properties and the business owned by the respondent No. 1, there can be no doubt that there is an increase in the income of respondent No. 1 and in any event, respondent No. 1 being rich man,has sufficient means to pay enhanced maintenance to the present petitioners.

5. I have perused the findings recorded by the learned Magistrate in the earlier proceedings. It has been held that the respondent No. 1, alongwith his brother and the parents, owns some 24 acres of land which is irrigated land. Further, he has shops which are let

out on rent. He has houses and he has business. In view of the above findings recorded by the learned Magistrate which have become final, the learned Sessions Judge has erred in reducing the amount of maintenance enhanced by the learned Judicial Magistrate, First Class, Manavadar under his judgment and order dated 17th January, 1994. It can safely be inferred that over the years his business income as well as agricultural income has increased.

6. In view of the above discussion, this petition is allowed. The judgment and the order of the learned Sessions Judge, Junagadh passed in Criminal Revision Application No. 22 of 1994 on 14th December, 1994 is quashed and set aside. The judgment and order of the learned Judicial Magistrate, First Class, Manavadar passed in Miscellaneous Criminal Application No. 138 of 1993 on 17th January, 1994 is restored. Respondent No. 1 is directed to pay the maintenance to the petitioners in accordance with the above referred order dated 17th January, 1994 passed by the learned Magistrate regularly commencing from 1st March, 1997. Respondent No. 1 shall pay all the arrears of maintenance calculated in accordance with the award made by the learned Judicial Magistrate, First Class, Manavadar on 17th January, 1994 on or before 30th April, 1997. Rule is made absolute accordingly.

*Vyas